The breaking down of this third essential of the common law crime, *i. e.* that the forged instrument must be of apparent efficacy to impose a liability, is the most striking differentiation of the new forgery from the old. In fact, under the New York decision, there are but two essential facts to be proved. They are (1) The uttering of the false writing. (2) The knowledge of its falsity. The third element, misrepresentation, is inferred from the false writing itself.

It is interesting to note that, while no statute has been given the extreme scope of this case, yet there is a line of decisions both in England and in this country which has gone almost as far and has positively disregarded the rule that an instrument to be the subject of forgery must be of apparent legal efficacy. These cases relate chiefly to letters of recommendation or testimonials of good character, holding such instruments susceptible of forgery. In *Reg. v. Sharman*, Dears. C. C. 285, the issuing of a false letter to enable a person to obtain a situation as schoolmaster was held to be forgery. To the same effect is *Reg. v. Toshack*, 4 Cox C. C. where, for the purpose of obtaining a berth as a seaman, a false testimonial of character was issued. In *Reg. v. Moah*, 7 Cox C. C., the defendant, with a view to obtaining a situation as police constable, issued a false letter of recommendation and his conviction on the charge of forgery was sustained. The two leading American cases which follow the English cases cited are *State v. Ames*, 2 Greenleaf (Me.) 265, and *Com. v. Coe*, 115 Mass. 481. This line of cases has, however, been much questioned and a leading text-writer on criminal law says they are at least extreme. *Clark, Criminal Law*, 338 N.

In view of the unprecedented breadth of the statutory crime as construed by the New York court and the incongruous situations that may arise from its strict application, as pointed out by Cullen, Ch. J., in his strong dissenting opinion, it seems extremely improbable that either the wisdom of the legislatures or the learning of the courts will be invoked again in the near future to further develop this peculiar aspect of the crime of forgery.

PRIVILEGED COMMUNICATIONS OF LIBELOUS MATTER.

It is well established that statements made with the *bona fide* intent on the part of the person making them, to protect his own interest in a matter where it is concerned, are privileged communications. The question is, how far does this privilege extend? Can a person, even to protect his own interest, make libelous statements to anyone, regardless of the fact that such persons may have no connection with the matter?

This question is answered in the case of *Sheftall v. Central of Georgia Ry. Co.*, 51 S. E. 646 (Ga.). Sheftall, a passenger conductor, had been discharged from the service of the defendant. At the time of his discharge he held a number of unused and uncancelled tickets, which were good for passage over the defendant's line of railway. The defendant issued a bulletin, beginning as

follows, "Tickets lost and scalped," and containing the above facts. This bulletin was issued to defendant's conductors and was also placed in a public and conspicious place where it was read by other employees and by the public. *Held,* That the communication to the conductors was privileged, but the communication to the other employees and to the public was not within the privilege.

This case lays down the rule, that the communication, of such libelous matter, is privileged only so far as it is necessarily made to others than those concerned in the subject matter of the publication. The statement must not only be no broader than the protection of the involved interest demands, but it must not be made to persons having no interest in the subject matter.

A circular letter sent out by a firm, stating that a certain person is no longer in their employ, and advising their friends and customers to give him no recognition on their account, is not a privileged communication. *Warner v. Clark,* 45 La. Ann. 863. But a publication issued by a railroad company to its division superintendents, of a list of employees discharged for cause, issued to prevent unsuitable men from being re-employed on other parts of the road, is a privileged communication. *Missouri Pac. Ry. Co. v. Beehee,* 2 Tex. Civ. App. 107. These two cases clearly show to whom such communications may be made and still be privileged. The persons to whom the statement is published must be limited to those to whom the interest to be protected requires that such information be given. Matter not necessary for the protection of the interest involved must not be embraced within the statement or the privilege will be lost. The privilege may also be lost by the use of violent language, when it is clearly unnecessary or by a method of publication which gives unnecessary notoriety and publicity.

"Where the expressions employed are allowable in all respects, the manner of publication may take them out of the privilege. *Newell on Slander and Libel,* 477. But mere publication to persons not interested will not *ipso facto* take the case out of the privilege. This question is well settled both in England and in the United States. Some courts have gone further than others, however, in extending the privilege. The Supreme Court of Michigan, in the case of *Bacon v. Michigan Central Ry. Co.,* 66 Mich. 166, went so far as to declare a blacklist within the privilege.

The presence of third persons may have been merely casual and not sought by the person making the statement, or the presence of such third person may have been due to the act of the party complaining of the publication, and of course in such cases the privilege is not lost. The statement must be made in good faith. A truthful statement, made to the parties interested, will be taken out of the privilege if made maliciously and with the purpose of injuring the plaintiff. *Rice v. Simmons,* 31 Am. Dec. 766. Good faith is essential in all cases.

In brief, we find that in action of libel it must appear that there is a statement made in good faith to persons interested, that

such a statement must be published upon a proper occasion and in a proper manner, and solely for the purpose of protecting some interest, or the defense of privilege will fail. The absence of any one of these essentials is fatal to the defense.

SALES OF MERCHANDISE IN BULK.

The remarkable rapidity with which the legislatures of the different states have passed laws favoring certain classes of people, has kept in the public eye the ever vexatious question of the proper limitations upon the police power of the state. And as this is necessarily a question of opinion and discretion, we are not surprised at the conflicting decisions on that subject. The recent case of *Wright v. Hart,* 34 N. Y. Law Journal, 165, (N. Y. Ct. of App.). seems contrary to the weight of authority, but was decided consistently with the position the courts of New York have taken, in tending to regard such legislation as unconstitutional.

The case turned on the constitutionality of a New York statute, *Laws of 1902, c. 528,* which provides that a sale of an entire stock of merchandise, or any portion of merchandise, other than in the ordinary course of business, shall be fradulent and void unless the seller and purchaser shall, at least five days before the sale, make an inventory as therein provided, and unless the purchaser shall make certain inquiries of the seller and give the creditors of the seller notice. In this case the plaintiff, a trustee in bankruptcy, sought to set aside the sale of his bankrupt's stock of goods to the defendant, on the ground that it was made without complying with the provisions of the statute. The Court of Appeals, by a scant majority, reversing a like majority of the Appellate Division, sustained the defendant's demurrer, holding that the statute is invalid because (1) it deprives the vendor and vendee of liberty and property without due process of law, by interfering with the freedom to contract; and because (2) it deprives them of the equal protection of the laws, in that the provisions of the act are aimed at merchants only and do not affect any other class of the community.

In his majority opinion, Justice Werner, strongly condemns the constant legislative encroachments upon the rights and liberties of the citizen under the guise of its police power. "Such a statute," he says, "sweeps away the constitutional rights of liberty and property of a limited class of citizens who are entitled to the equal protection of the laws with all other citizens." It denies the right of a specified class of citizens to sell a particular kind of property; it makes no distinction between honest and dishonest sales; it restricts the right of contract so as to deprive property of its characteristics as such. The right to use, buy, and sell property is protected by the Constitution, and when the law destroys its value and strips it of the attributes by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation of the constitutional provisions enacted expressly to shield personal rights from the exercise of arbitrary power. *Wynehamer v. People,* 13 N. Y. 378-389.